



## Marijuana Scheduling

During the 2015 legislative session, Second Substitute Senate Bill 5052 (SB 5052) was passed by the legislature. It was signed by Governor Inslee on April 24, 2015. The Governor vetoed Sections 42 and 43, which would remove from Schedule I of Washington State's Controlled Substances Act any medical marijuana product that the Department of Health identifies in rule as "appropriate for sale to qualifying patients and designated providers in a retail outlet that holds a medical marijuana endorsement."

In his veto message, the Governor noted that rescheduling just medical marijuana "may cause serious problems such as having the unintended effect of limiting the types of marijuana that are considered medicine." Therefore, he directed the Department of Health to "thoroughly consider this idea in consultation with medical professionals and stakeholders, and bring an appropriate resolution to me and the Legislature by next year."

### History of Marijuana Laws

- **Federal Law, 1970**

Members of Congress initially categorized cannabis as a Schedule I substance, the most restrictive classification available, in 1970. Under this categorization, the plant is defined as possessing "a high potential for abuse, have no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug or other substance under medical supervision."

- **Initiative 692 – Medical Use of Marijuana in Washington State, 1998**

The medical use of marijuana was first authorized by Washington State Voter Initiative 692 in 1998. I-692, codified as chapter 69.51A RCW, granted an affirmative defense to criminal prosecution to qualifying patients and their primary caregivers (later changed to "designated provider"). The patient was required to have a recommendation from a healthcare practitioner and could possess no more than a sixty-day supply of marijuana.

- **Initiative 502 – Legalize the Purchase and Possession of Marijuana in Washington State, 2012**

Washington voters passed Initiative 502, in November of 2012. I-502 legalized the purchase and possession of small amounts of marijuana for all adults. It also created a taxed and highly regulated system for the production, processing and retail sale of marijuana.

- **SB 5052 - Cannabis Patient Protection Act in Washington State, 2015**

The Legislature reconciled the medical and recreational markets with the passage of SB 5052 and HB 2136 earlier this year. It is important to note, however, that the *medical use of marijuana* is not yet legal at either the state or federal level.

Beginning July 1, 2016, changes to chapter 69.51A RCW created by SB 5052 will legalize the medical use of marijuana for patients and designated providers who are entered into the patient authorization database. Patients and designated providers who choose not to be entered in the database will continue to have an affirmative defense to criminal prosecution.

The medical use of marijuana remains illegal at the federal level despite a certain level of tolerance conditioned upon full compliance with applicable state laws.

# Marijuana Scheduling Options

The Department of Health proposes three options for consideration and discussion:

## 1. Do nothing at this time.

### *Implications:*

- Does not require any changes to Washington state laws or rules.
- Keeps the Washington Controlled Substances Act aligned with federal law.
- The use of marijuana for either medical or recreational reasons would continue to be illegal under federal law. Marijuana continues to be authorized (not prescribed) by healthcare practitioners without putting their controlled substance prescriptive authority at risk.
- The Schedule I penalties apply to any use, possession, sales, and distribution of marijuana or THC products outside the legal market established under I-502, SB 5052 and chapter 69.51A RCW.
- The Washington Controlled Substances Act will continue to list marijuana as a substance that has no currently accepted medical use which conflicts with chapter 69.51A RCW.
- Though not in compliance with federal law, Washington State's tightly regulated system focuses on meeting the federal government's enforcement priorities.

## 2. Re-schedule marijuana to Schedule II - V or to a legend (prescription) drug.

### *Implications:*

- Conflicts with I-502's recognition and legalization of recreational use of marijuana.
- Makes medical marijuana subject to all the requirements of any other prescription drug. The requirements for prescribing, manufacturing, wholesaling, distributing, selling, dispensing, and administration of prescription drugs would apply.
- If treated like other prescription drugs, growing for personal use would not be allowed.
- Conflicts with federal law, so healthcare practitioners wouldn't be able to "prescribe it." If they did write a prescription for marijuana, it may place their federal Drug Enforcement Agency (DEA) registration at risk of being revoked.
- Marijuana would have to be dispensed through a pharmacy, which conflicts with the system created under I-502, SB 5052 and chapter 69.51A RCW.

## 3. De-schedule marijuana from Washington State's Controlled Substances Act when used within the parameters of I-502, SB 5052 and chapter 69.51A; all other use would still be illegal.

### *Implications:*

- Does require changes to Washington state laws or rules.
- Marijuana would be legal and not a Schedule I drug for people following all rules for growing, processing, selling, possession and use under I-502, SB 5052 and chapter 69.51A RCW.
- Schedule I penalties would still apply to any use, possession, sales, and distribution of marijuana or THC products outside the legal market established under I-502, SB 5052 and chapter 69.51A RCW.
- The use of marijuana for either medical or recreational reasons would continue to be illegal under federal law. Marijuana could continue to be authorized (but not prescribed) by healthcare practitioners without putting their controlled substance prescriptive authority at risk.
- The Washington Controlled Substances Act will align with I-502, SB 5052 and chapter 69.51A RCW.
- Though not in compliance with federal law, Washington State's tightly regulated system focuses on meeting the federal government's enforcement priorities.